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C O N F I D E N T I A L SECTION 01 OF 02 ABUJA 001381

SIPDIS

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TAGS: [PGOV](#) [KCOR](#) [PREL](#) [BEXP](#) [EINV](#) [EFIN](#) [NI](#)

SUBJECT: NIGERIA: U.S. COMPANY LOSES BID, ALLEGES
PRIVATIZATION HAS LOST TRANSPARENCY

Classified By: AMBASSADOR JOHN CAMPBELL FOR REASONS 1.5 (b) AND (d).

[11.](#) (U) ACTION REQUESTED PARAGRAPH THIRTEEN.

[12.](#) (SBU) Summary: Earlier this year, Nigeria's Bureau of Public Enterprises (BPE) solicited bids in the sale of a majority stake in ALSCON, the state aluminum smelting plant. The bid by an American corporation, BFIGroup Corporation, to acquire the 77.5 percent share in ALSCON allegedly has been thwarted by a lack of transparency in the bidding process, and perhaps some corruption as well. We understand that BFIGroup has sought the assistance of the U.S. Commerce Department, as well as Embassy Abuja, in advocacy for its claim to be the legitimate bid winner. Embassy recommends due diligence by the Advocacy Office or State/EB/OCA on BFIGroup's U.S. operation, and request guidance. End Summary.

[13.](#) (U) Earlier this year, Nigeria's Bureau of Public Enterprises (BPE) solicited bids in the sale of a majority stake in ALSCON, the state aluminum smelting plant. The plant, completed in 1997 at a cost of approximately USDOLS 2.5 billion, operated well below capacity until May 1999, when production ceased due to lack of working capital and inadequate gas supply. Efforts to privatize the corporation began in earnest two years ago, but were delayed for various reasons until this year.

[14.](#) (U) In April, BPE announced the two shortlisted bidders for the 77.5 percent stake: BFIGroup Corporation and Russian Aluminum (RUSAL). BFIGroup, an American company, boasts 38 experts in the aluminum industry. According to documents it filed in the tender process, BFIGroup has a technical and marketing agreement with Daewoo International (America) Corp. to purchase and market the aluminum products.

[15.](#) (U) BPE opened the financial bids June 14. RUSAL's initial offer of USDOLS 205 million was conditional on the cancellation or repayment of all ALSCON liabilities. RUSAL refused to pay the 10 percent up-front fee required without this and other conditions being met. BPE summarily rejected the bid as against its rules, and disqualified RUSAL from the process. BFIGroup submitted a bid of USDOLS 280 million, and raised it to USDOLS 410 million to meet BPE's minimum reserve price. BFIGroup was declared the winner by the Chairman of the Technical Subcommittee of the National Council of Privatization (NCP).

[16.](#) (U) Instead of granting preferred bidder status to BFIGroup, the GON announced it was renegotiating with RUSAL. RUSAL's bid dropped to USDOLS 160 million. A few days later--allegedly due to pressure from the international community--the GON reversed its stance and allowed BFIGroup to proceed as the preferred bidder. According to BFIGroup, given Nigeria's history in financial dealings and the uncertainty over the political situation resulting from BPE's quick reversals, BFIGroup had to soothe jittery investors and requested an extension to the 15 day period stipulated in which to make the 10 percent downpayment (USDOLS 41 million). Again, according to BFIGroup, it filed such a request on June 28, as well as a second one July 6, both of which BPE rejected, and the deadline to sign the Sales Purchase Agreement (SPA) passed. At this point BFI Group was officially out of the running, pending appeals.

BPE NOT PLAYING FAIR?

[17.](#) (SBU) On 28 July, the CEO of BFIGroup, Dr. Reuben Jaja, met with Poloffs to discuss what he alleged were the transparency and possible corruption problems in the bidding process and to ask for assistance. He alleged several instances of unfair and/or criminal actions on the part of the BPE and GON:

- The sealed envelope containing the BFIGroup bid proposal had been tampered with while in the possession of the BPE;
- BPE refused to meet with company representatives to sign the SPA during the 15-day grace period, waiting until the deadline had passed;
- Requests to the BPE for extension of the 15-day downpayment period were rejected, although granted to investors in several other recent privatizations;
- Local media reports that BFIGroup's CEO is an ex-convict constitute a smear campaign against him personally;
- An imposter claiming to be an employee of Chase Manhattan Bank gained access to the BFIGroup's bank account, presumably

intending to arouse suspicion about the corporation's finances; and

- BPE has attempted to cash the USDOLS 1 million bid bond submitted by BFIGroup during the negotiation. BFIGroup has filed a court injunction to prevent this action.

18. (U) Emboffs discussed with BPE officials, but their rebuttals to the allegations of bias and lack of good faith negotiation were often contradictory. They have stated that the BFIGroup did not submit extension requests in time, then stated that BFIGroup did in fact submit the request in time. BPE first said that BFIGroup had refused to sign the SPA for ALSCON, and then that the company did seek to sign the SPA but BPE prevented the signing before the deadline.

19. (C) BFIGroup CEO Jaja told Emboffs that BFIGroup representatives met with President Obasanjo the night of June 13. At the meeting, Obasanjo asked for the particulars of their bid. When the BFIGroup's legal advisor advised that this would be illegal and could affect the process, the President allegedly retorted, "but the Russians showed me their proposal." After the meeting, Deputy Senate President Ibrahim Mantu allegedly tried to intervene on behalf of the American firm. Mantu reported back to BFIGroup's CEO that NSA Mohammed Aliyu Gusau and the President's wife Stella Obasanjo had advised Mantu that he was "on the wrong side." Mantu reportedly told the CEO that Stella had offered to "take care of him" if he would switch his support to the Russians.

10. (C) BFIGroup appears ready to pursue this matter rather than accepting defeat. It has contacted the World Bank about BPE's questionable privatization practices and requested assistance from the Embassy in pursuing its case at a political level in Nigeria. It says it plans to approach the U.S. Congress as well. The CEO has engaged a team of lawyers in Nigeria to file a suit against the BPE process and is looking to do the same in the U.S. In the letter to the World Bank, BFIGroup hinted that "big people in Nigeria were involved" and that it might be forced to begin naming names.

11. (C) Comment: BFIGroup's allegations are serious. If well founded, the USG would have cause to raise this matter at the highest level. Press reports suggest need for caution, however. Some have given conflicting stories on BFIGroup's position, and whether it is incorporated in the U.S. (California) or not. One newspaper, BusinessDay, also reported on July 7 that BFIGroup and its founder, Jaja, are being sued for fraud in the Orange County Superior Court in a case from August 15, 2000 in connection with their failure to obtain regulatory approval to operate a wire transfer business. BusinessDay said the case was allegedly settled out of court, but the plaintiff's attorney claimed Jaja defaulted on his obligation to pay and was sued again on May 12, 2004 for fraud by the same party in a case "Richard Nguyen v. Reuben Jaja, Bancorp Financial Investigations Group, No. 04CC05740, Complaint for Fraud, Conversion, Money Had and Received, Breach of Contract, and Accounting."

12. (C) BFIGroup is also alleged to be involved as the financial advisor for Solgas in a messy contract for Solgas to resuscitate Nigeria's Ajaokuta Steel complex, and specifically that it defaulted in sourcing the money to pay for the Solgas bid.

13. (SBU) ACTION REQUESTED: BFIGroup has asked that the Mission intercede with the GON, and USDOC has received a similar request. Please advise.
CAMPBELL